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World Chronicle

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GUEST: **Hans CORELL**
Under-Secretary-General for Legal Affairs and the Legal Counsel

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LEGAL AFFAIRS

Hans CORELL, United Nations Under-Secretary-General for Legal Affairs and the Legal Counsel, discusses a wide range of legal issues of special importance to the world community. The proposed international criminal tribunal is the missing link in international law. Its jurisdiction would be over crimes of an international character -- such as genocide, aggression and crimes against humanity -- under existing international law and treaties. But no agreement has been reached in the General Assembly Sixth Committee (Legal Committee) on the establishment of such a tribunal. The Office of Legal Affairs provides legal services for the UN Secretariat and other UN agencies on questions of international and national law as well as peacekeeping and other international treaties and conventions.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**.

The history of the United Nations is very much connected to the development of international law. Across a wide range of activities, from treaties and conventions to human rights and trade, law plays a central part in the work of the world organization as it approaches its 50th anniversary.

Our guest today has a unique perspective on international law. He is Hans Corell, Under-Secretary-General for Legal Affairs and the Legal Counsel. Joining me to talk with Mr. Corell are James Bone of *The Times* of London and Thalif Deen of Inter Press Service. Mr. Corell, welcome to World Chronicle.

Mr. Corell, I read the other day that the United Nations now has a jail at The Hague, which is ready to incarcerate the first persons to be accused under the former Yugoslavia war crimes tribunal. And Mr. Justice Goldstone, the UN Prosecutor, has spoken of having indictments fairly soon. At the same time, a lot of people are very sceptical that anyone is ever going to be brought to trial and, if brought to trial, will be convicted and imprisoned. What are your comments on that?

CORELL: Well, my comments are that certainly there will be people brought before this international court. For 50 years, the United Nations have been struggling with the question of how to set up an international criminal court. And I was not aware that the Security Council thought that they had a power of setting up a tribunal in the way they've done in The Hague, but that is a fact. The Security Council is the master of the charter of constraint, the rules that govern the Council, and they decided to set up this tribunal.

LITTLEJOHNS: So, as an international lawyer, are you questioning the right or the capacity of the Security Council to have done what it did?

CORELL: I am not. But I was involved in this issue before I took up office here in the United Nations, in the Conference on Security and Cooperation in Europe. And we were in that context asked to draft a treaty for those states that belong to that regional arrangement to set up a tribunal. And our proposal was one of the proposals that founded the basis for the Security Council when they set up the tribunal. But as I said, the Charter is a living instrument, the Charter is construed by its organs, and when they take decisions of this kind, that is the contents of the Charter.

BONE: But now, Mr. Corell, there's another plan to set a up second tribunal for Rwanda for the genocide and other crimes against humanity in Rwanda. And as I

understand the plan, there would be separate trial chambers, two three-judge trial chambers that will be separate from the Yugoslav tribunal, but that the appeals chamber, a five-judge chamber in The Hague, will be the same for both Rwanda and the former Yugoslavia. Are we effectively setting up an international criminal court by shortcut now?

CORELL: Well, some people may say so, but I think we should look at each event as it occurs. And I realize that there will be a problem if you have two instances that are supreme in the sense that they are the last instance to adjudicate cases. Therefore I think that the Security Council might be careful here to see to it that all appeals end up in the same chamber, that we have one supreme instance, as it were. That is the rationale behind the supreme courts --

BONE: And there's going to be one prosecutor, a single prosecutor as well, isn't there?

CORELL: Yes, but also here there is merit, because if you look at the national level you will see that there is always a central prosecutorial function at the national level, and there's always a supreme court. And I think that for the prosecutor there are also some decisions of principle to be taken, and it might be that it's best that there's one person coordinating this activity.

DEEN: Mr. Corell, this proposal for the international criminal court, it has been here in the UN system for a long, long time, you know, and there are some developing countries that say that such a court will impinge on the sovereignty of nation states. Do you think this court is feasible? Will it be approved by the General Assembly?

CORELL: Well, I think my position on this question is well known because of my previous activities. And in a sense I think that the fact that there is no international criminal tribunal is a missing link in the system of international law. The United Nations faced this question in the early 50s, but politically it wasn't possible to solve it. But only three or four years ago there was a sudden change in the Sixth Committee, the Legal Committee of the United Nations General Assembly, and they asked the International Commission, which is sort of a law-making body under the General Assembly, to provide a draft statute for an international criminal tribunal. And they have done so. And as a matter of fact, this item is one of the most topical items on the agenda of the General Assembly this autumn.

DEEN: So you think it will be a reality this year?

CORELL: I don't want to talk about this year, 1994; no, that wouldn't be proper. And you must realize that this is a major legal exercise, because if such a criminal court is to be set up, we have to have a very sound legal analysis, and of course

it must be based on a treaty -- I think everybody agrees to this. But there are issues, like for example, what should be the connecting link between this tribunal and the United Nations and the Charter?

BONE: Well, which -- there's also the question of which crimes such a court would try. I mean, some countries wanted to try the crime of colonialism, for instance; other countries wanted to try international drug smugglers, international terrorists. I mean, we're not just talking about clear international crimes like genocide and breaches of the Geneva Conventions on the conduct of war; we're talking a whole array of crimes. And yet there's no agreement on what kind of crimes should be tried. How is that issue going to be worked out?

CORELL: It's for member states to decide on. And you're right, there are lots of ideas here. But I think this is normal when you are engaging in drafting a convention on any topic, that there -- states have different views on this, and they would like to have their favourite idea reflected in the convention. But this is part of the negotiating process. And I think that there is certainly a hard core here where I hope to see agreement among member states that at least these crimes should fall under the jurisdiction.

BONE: We seem to have three different institutions here, we have the court on Yugoslavia, the court on Rwanda, and a proposal for a general international criminal court with more wide-ranging jurisdiction, and they seem to conflict in many ways. For instance, the court on Yugoslavia is most likely to be trying low-ranking soldiers who committed atrocities in Bosnia who have fallen into the hands of the Bosnian Government. The court on Rwanda, on the other hand, is quite likely to be trying leaders of the genocide. I mean, the Special Rapporteur on Human Rights has handed a list over of 55 names of the ringleaders of the genocide. So there already you've got a double standard.

CORELL: I don't see any double standard here because we don't know what will happen. We must remember that all the people that are engaged, from the Security Council to the judges to the prosecutor to the staff, they're pioneers. Nobody ever did this before. They have a parallel, certainly, with the Nuremberg Tribunal, but this is the first time the World Organization sets up a tribunal of this kind. At the national level it has taken us hundreds of years to build up our legal systems. And we are in the commencement, at the beginning of a process. And, thinking in longer terms -- I see 10, 20, 50 years ahead -- we must remember that international law is formed and shaped by the interaction, through the interaction of states over many, many years.

LITTLEJOHNS: Mr. Corell, let's get a little technical for a moment. What legal systems are going to apply in these war crimes trials? There are, after all, several different legal systems in the world. How is the UN going to decide which or what meld of systems is going to be applied?

CORELL: I think development will prove that the judges or the prosecutors acting under the statute, they will develop a system like what lawyers call a *sui generis*, a system in itself. It has to reflect different legal systems. But my experience from previous activities in the Council of Europe, where we have a court for human rights, proves it. That court has developed a system of its own, and I'm sure that we will see the same thing here. We have the Court of International Justice, the World Court, which is already reflected in the Charter; that court has also developed a system of justice of its own.

DEEN: Mr. Corell, there's another controversial proposal before the Legal Committee. That's the international convention to punish those who kill UN personnel. Do you think that will be a reality this year? I believe it's being discussed by the Sixth Committee just now.

CORELL: Yes. Yes, indeed, it's discussed by the Sixth Committee. Actually, there's a working group working under the chairmanship of Ambassador Philippe Kirsch of Canada, and it's reported to me that they are making progress. But as I said before, states have different views, so when we come to the details, there is still, as I understand it, no agreement. But I'm hopeful that we will see a document that could be presented to the General Assembly the autumn of 1994. Now, whether that will be adopted this year, I don't know.

DEEN: They have problems, too.

CORELL: I don't want to describe it as problems. There are different views, but this is normal when you're negotiating international documents.

BONE: Can I ask you about the question of penalties? I mean, you're going to try these people, whether for genocide in Rwanda or war crimes in Yugoslavia, or be it killing a UN official somewhere in the world. Now, what are the penalties? Where are they going to be put in jail? Can they be kept in jail indefinitely? And also why, in the case of genocide, for instance, is there no death penalty? We're in a very strange situation with Rwanda where the ringleaders will go before an international court and be sentenced -- presumably, if they're found guilty -- to life imprisonment, whereas some of the lower down people will be tried in the domestic system, which has capital punishment, and they'll be killed.

CORELL: Yes. But national legal systems, they always have jurisdiction. And as long as these jurisdictions are in conformity with international law, the states have the right to take the measures they see fit. But when the United Nations sets up a criminal court, I would not like to see that court being entrusted with the right to use capital punishment.

BONE: But the Nazi leaders in Nuremburg of course were hanged.

CORELL: That is true, but this is 50 years ago, and international law develops. You will notice from the statute for the tribunal for Yugoslavia that that tribunal is not empowered to apply capital punishment. And I think this should be as a signal. And also I recall that there is now a second additional protocol to the Covenant on Civil and Political Rights, and that protocol is open to states that would like to demonstrate to the world society that they are not going to apply capital punishment.

LITTLEJOHNS: Mr. Corell, let's change the subject: the Law of the Sea Convention. The United States has finally come on board, after considerable delay, and it looks as if practically everybody who's a member of the United Nations and some non-members are going to be joining the Convention. How important is this and what's it going to do?

CORELL: I think this is extremely important. This is one of the major legal instruments that have been formed under the auspices of the United Nations. It was adopted in 1992, but it soon became evident that many states, and particularly industrialized states, were not in a position to ratify the Convention. And it was kind of a limbo situation until Secretary-General Perez de Cuéllar took the initiative to conduct consultations in order to have everybody on board, as it were. Secretary-General Boutros-Ghali continued this effort, and it was possible in June 1994 to come to some kind of understanding among the different groups, as it were. On the 28th of July the General Assembly adopted an additional instrument to the Law of the Sea Convention; this instrument is designed in a way that more states will find it possible to join in. The Convention enters into force on the 16th of November, and it will govern the areas of the ocean and what is under. We should remember that these areas are 70 per cent of the surface of the earth, and increasingly this will be important. The areas that are outside jurisdiction of national states are called the Common Heritage of Mankind, and I'm sure that everybody now realizes, particularly in view of the environmental threats, that we are -- we had better to watch carefully over that.

One of the topics that we are discussing now in this context is the straddling fish stocks. That's the fish that wander in the sea and --

LITTLEJOHNS: But there's no agreement on that. There's --

CORELL: There's no agreement, no, but they are starting to discuss it. They -- all of a sudden states realized how precious the fish stock is, and that we'd better govern it in a way that we don't destroy the resources of the earth.

BONE: But the key objection of the industrialized countries to the Law of the Sea treaty was, of course, provisions on deep seabed mining, which stopped them sending their ships out to pick up these manganese nodules or whatever they are from the deep seabed.

CORELL: That's true.

BONE: And there was a whole regime put in place to govern who could mine, where they could mine, where the money went, who had to transfer technology to whom. How has that regime now been changed to satisfy the industrialized countries?

LITTLEJOHNS: Mr. Corell, before you answer that, this is World Chronicle, our guest is Hans Corell, United Nations Under-Secretary-General for Legal Affairs and the Legal Counsel.

CORELL: Well, I'm afraid that an answer to that question would be very technical. But let me say this: that when the Convention was drafted everybody thought that deep seabed mining was just around the corner. But I think now the technology has shown that it may take some time before this becomes a viable prospect from economic points of view. And in the meantime, I think there's also realization that maybe the regime that was created in 1982 under Chapter XI of the Law of the Sea Convention was not really the kind of thing that would be appropriate today. Therefore there have been slight modifications in that system, and these modifications obviously are the kind that states from different groups are able to accept.

DEEN: Mr. Corell, there seems to be a new legal dispute relating to intrastate conflicts. And there are a number of developing countries which say that the United Nations has no right to intervene, not even with humanitarian assistance, because it's a violation of the sovereignty of that country and a violation of the UN Charter. What is the legal position on this?

CORELL: You talk about sovereignty, and of course in international law the sovereignty of states is a very important concept. But gradually I think states have come to realize that we are all neighbours now in the world, and in particular if you look at environment, if something happens in one state it could have repercussions on the other side of the globe. This means that states have to realize that whatever we do now, it has effects on the other side of the border. And the fact that states have agreed to the Charter of the United Nations is in a sense to say that we abstain partly from our

sovereignty, we accept the Charter, we accept the power of the Security Council, for example. That is to, in advance, give away part of your sovereignty.

And if you look at other aspects, for example, humanitarian intervention, the question is how long can the member states of the United Nations stand by and just watch atrocities being committed on the other side of the border? We have seen already now examples of the fact that action is being taken.

DEEN: What they say is that the UN should come in only with the consent of the state concerned. And it shouldn't come without any invitation from the states.

CORELL: Oh, that is true. But the Security Council, as you know, have the power to act under Chapter VII of the Charter. And if the Security Council deems that the situation could threaten peace and security, they have the right, as they've had ever since this organization saw the light of day, to intervene.

BONE: Can I ask you the reverse of that question in a way, a question that I'm sure a lot of people watching will want to know the answer to from a legal point of view. In the Charter -- it says nothing in the Charter that should prevent a state from exercising its right to individual or collective self defence, and yet we see a state like Bosnia subject to a UN arms embargo and unable to import arms to defend itself. What is the legal rationale on the Charter for Bosnia, which was recognized as a state by the United Nations after the imposition of the arms embargo, being denied the right to individual or collective self defence?

CORELL: This is a very complex question, and I don't think it is appropriate for me to comment in detail on it. As a matter of fact, I said a while ago that the Security Council is acting under the rules of the Charter. The Security Council has to decide, as any body set up under a legal system, the limits of their powers, and they have taken the matter as they have seen fit to cope with the situation in the former Yugoslavia. As far as I can understand, they are the ones who construe the Charter and they take the decisions.

BONE: But given the ambiguity of the situation, would a country X, who decided that they wanted to ship arms to the Bosnian Government and claimed they were relying on the Charter provision protecting the right to individual or collective self defence, be violating international law or would it not? Wouldn't it have just as good an argument as the Security Council members have?

CORELL: Well, I must say that this is an extremely difficult question, and it is also highly political. We must realize that international law has a very sort of wide interface with politics. And I don't think that it is appropriate for me to give any clear and hard and fast statements on this very complex issue. What I should like to say is

that when the Security Council take action, they take action under the Charter of the United Nations. That Charter is now accepted by over 180 states. Therefore we should very carefully observe what the decisions of the Security Council are and sort of adjust ourselves.

LITTLEJOHNS: Mr. Corell, tell us about the work of the Legal Office. What kind of things are you occupied with at the present time, for instance?

CORELL: It's a wide variety, it's really a rather fascinating area to be. I mean, in my office the whole activity of the United Nations family in a sense is reflected. There is a very good tradition, I'd say, in the United Nations to ask legal advice on various questions. This means that we keep getting questions from Peacekeeping Operations, from other departments in the office, from UNHCR, from UNRWA, you name it, every activity in the United Nations generates issues that might need legal advice. I have six divisions in the Legal Department, the office of the Legal Counsel being the most exposed, perhaps. We deal with questions that come from the Secretary-General in person or from the Security Council or the General Assembly or any other body that needs legal advice on a particular issue. We have the in-house lawyers in the general Legal Division that deal with contracts and proceedings before the Administrative Tribunal. We have the C lification Division that is serving the International Law Commission, which I mentioned a while ago.

LITTLEJOHNS: How do you deal with the conflict between law and politics?

CORELL: This is an issue that has been there ever since the concept of international law was formed. I think that at the national level it is much easier to give legal advice, because there rules are often more clear and the audience, as it were, at the national level, they are much more knowledgeable about their national law. If you give advice which is not accurate, you can be sure that there are lawyers that would discover that at home, and you would know about it. International law is more vague.

LITTLEJOHNS: More vague?

CORELL: It's more vague in a sense. There are areas where you cannot say that I'm 100 per cent sure that this is the content of international law. You should remember that one of the most important factors to develop international law is customary law. That is to say the actions taken by states or international organizations are in themselves forming underway the contents of international law.

DEEN: Mr. Corell, on the question of a legal ruling from your office, the US Senate sometime this year said that 20 per cent of the budget, 20 per cent of the US contribution should be held back unless the United Nations created an inspector-general. What is the legality of a restriction like this by a member state?

CORELL: Well, I think that this decision is discussed very much in the US Senate also. The position of the Charter is that member states, they have to pay their dues to the organization. And that's it.

BONE: We have the impression, those of us who cover the UN a lot, that often the judgements of the Legal Office are purely for political expedience or convenience. There have been two recent cases directly affecting journalists. One was the decision by the Legal Office that journalists accredited to organs from Taiwan shouldn't be allowed accreditation as journalists in the United Nations, and the other was the decision by the Secretary-General on the basis of your legal advice not to let a Chinese dissident into the building, a pro-democracy campaigner, because the Chinese Government objected. He was invited to speak in the press club in the building, which your office held the press club wasn't a place where journalists could meet anybody they wanted to meet. Can you explain these kinds of judgements? They seem to be a little bit arbitrary to many of us.

CORELL: I'm sorry they seem arbitrary. You must realize that we are part of the United Nations Secretariat. As such, we have to abide strictly by the Charter of the United Nations. Sometimes we get questions which are, as I said, highly political. This makes it all the more important for us to look at the instruments which govern the organization. Now, we cannot, in the Legal Office, take decisions that are diversions from the decisions taken in the General Assembly. If the General Assembly takes the position that a particular entity is not a state or is not a member of the General Assembly, or in some other capacity, then this is the basis on which we form our legal advice.

BONE: We were talking about journalists who were actually accredited to a Party newspaper in Taiwan. Well, I mean, what's the General Assembly got anything to do with that? And on the second question, the question of the access to the press club, I mean, previous secretary-generals who -- talk about custom -- had consistently allowed the press to interview anybody they wanted to in that press club, and Boutros Boutros-Ghali came in and, under pressure from China, decided not to allow this particular Chinese dissident, Shen Tong, into the press club, and your Legal Office cast aside custom and gave a new judgement.

CORELL: I'm sorry to hear that. I'm not aware of this case. This is something I would have to look at.

LITTLEJOHNS: Mr. Corell, that's -- Mr. Bone, Mr. Corell, that's all the time we have. Thank you for being with us on this edition of World Chronicle. Our guest has been Hans Corell, United Nations Under-Secretary-General for Legal Affairs and

the Legal Counsel. He was interviewed by James Bone of *The Times* of London and Thalif Deen of Inter Press Service.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of World Chronicle.

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